

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

UNITED STATES COURT OF APPEALS
For the SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-v.-

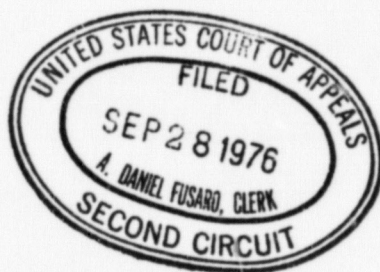
JACK G. SCHWARTZ and GEORGE SARKIS, a/k/a "GEORGE",

Appellants.

On Appeal From the Eastern District Court
For The Eastern District of New York

APPENDIX ON BEHALF OF APPELLANT
GEORGE SARKIS

JOHN NICHOLAS IANNUZZI
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1. Ebbert-direct

2 Q What did George say to you when he came off
3 the phone with Mr. Schwartz?

4 A This all didn't happen, you know, like
5 right after one another, You know, one, two, three. I
6 mean, the drinking and watching the -- it was a topless
7 place that we were at and we were watching the dancers
8 or whatever and the conversation came up that I said to
9 him: What are we going to do? Are we going to go now?
10 Because George had a flight to get later on that evening.

11 MR. MR. IANNUZZI: I'm having a little difficulty.

12 THE WITNESS: I'm sorry. George had a
13 flight to get later on that evening. He was
14 going home. I said: What's the plan? What are
15 we going to do now? He said: We have to wait around
16 a little bit longer now and then he started
17 talking about, you know, what -- what can happen,
18 what -- I forget what you said, whether I could
19 bring this all in.

20 THE COURT: Conversation with Mr. Sarkis,
21 George Sarkis.

22 THE WITNESS: Right.

23 THE COURT: About what he could do?

24 THE WITNESS: Yes.

25 THE COURT: I'll allow you to testify as to

Ebbert-direct

that.

THE WITNESS: He made a statement to me, as far as that he could set the house on fire and like he would pick people off, shooting them when they were coming out of the house although he didn't have gun with him and at this point.--

MR. KIMELMAN: I;m sorry. Let me stop you.

THE COURT: These statements are again only on the issue as to whether whatever happened was done intentionally or whether he was in such a drunken stupor that he didn't know what he was doing but it in no way can be charged against the defendant Jack Schwartz.

MR. IANNUZZI: And if your Honor please, only for the purpose of intent.

THE COURT: Yes, that's what I said. Whether the acts that were committed, allegedly committed, if the jury find that they were committed, whether they were committed by Sarkis intentionally or not. Whether he was aware of what he was doing. The statements that he made before bears on that issue and that issue alone.

BY MR. KIMELMAN:

Q Now, whose house was George talking about

Ebberts-direct

burning down?

A This is a -- a question that -- whose house was he talking about burning down? I don't think you could -- I could honestly say that I would say he was talking about McGhee's house burning it down because he didn't even have a gun with him. That he was talking. He was talking hypothetically.

THE COURT: All right.

Q And did you have a further discussion about burning down a house?

A Yes. I had -- then he mentioned about -- maybe burned down, you know, McGhee's house. I said: Well, there are people in there. We got into a conversation about it and we -- being at the house already, we knew there was a woman there, an older woman there. I said: Why would you want to hurt any of the people. That's not going to get Schwartz back his money. I said: That's -- you know, that is not good. I'm not going to be a part of it, like that. You know, then he started -- at this time I didn't know whether he was just talking through his hat or what.

Q Did you tell him that Schwartz couldn't get his money if McGhee was dead?

A I made that statement to him, yes.

Q What was George's response to your arguments

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2 to him?

3 Q Like I said to him, Schwartz can't get his
4 money back if -- you know, if McGhee is dead or whatever
5 you're talking. He said yes, that's true. He didn't give
6 any more response than that, that's true, yes, that's
7 right. Something to the effect we have to teach him a
8 lesson, whatever.

9 Q Is this when the conversation came up about
10 Jack Schwartz was tired of being make a fool out of?

11 A You're asking -- asked me that before. I
12 just testified I'm not sure where I heard that statement
13 before. I can't honestly answer that.

14 Q And did there come a time when you decided
15 to burn something?

16 A Yes.

17 Q And how did that come about?

18 A I don't honestly know whether --you know,
19 because he was talking that he was going to burn the house
20 down. I don't know how it came about but the fact it came
21 about, whether it be through -- through, you know, the
22 same burn something else down or burn the car down or
23 something like that, teach him a lesson, what are you
24 going to do, so then he decided he'd burn -- that he'd
25 burn the garage down.

Ebert-cross/Iannuzzi

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2 Q In any event, by the way, do you carry a gun?
3 Are you licensed for a gun?

4 A No, sir.

5 Q In any event, you know George didn't have a
6 gun, right?

7 A Correct.

8 Q And when you were sitting there talking at
9 the bar, whatever you were doing, glass in front of you
10 and George says, "Well, I could do this," you didn't think
11 that George was talking seriously about McGhee's house,
12 did you?

13 A Not at first.

14 Q As a matter of fact, he couldn't have been
15 talking about shooting because he didn't have a gun, right?

16 A That's correct.

17 Q As a matter of fact, you testified this morning
18 it was a hypothetical thing, "I guess you can burn a house
19 down, shoot people," I guess you could do that, couldn't
20 you?

21 A Yes.

22 Q The physical possibility?

23 A Right.

24 Q Then there was something, you say, something
25 about burning down a house? George said it, right?

Ebert-cross/Iannuzzi

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A Right.

Q Or was that the same thing, burning down a house with the people all at the same time or separate?

A One led to the other.

Q This is at the time you had this whole conversation, you were continuing drinking, right?

A Correct.

Q Do you know whether or not George was drunk?

A I couldn't answer that, whether he was drunk.

Q Do you know whether he was serious about what he was talking?

A I really couldn't answer that, no.

Q Do you know if he really had his right wits about him, intended to burn a house down?

A I think the thought occurred to him.

Q As a matter of fact, didn't you say that if you had had your head a little clearer you wouldn't have been involved in this thing yourself?

A I said that, yes.

Q Right?

A Right.

Q Do you think that was George's frame of mind if it was clear he wouldn't be involved in that?

MR. KIMELMAN: Objection.

1 Ebert-cross/Iannuzzi

2 THE COURT: Objection sustained.

3 IANNUZZI: Very well, sir.

4 Q In any event, then the conversation was,
5 "Well, Jack Schwartz isn't going to be able to collect any
6 money if the house is burned down."

7 By the way, did you know whether or not Jack
8 Schwartz had a mortgage on that house?

9 A Did I know factual?

10 Q Yes.

11 A I don't think I knew it at the time.
12 I really don't remember.

13 I took a lien on that house when I worked for
14 Associates, when McGhee had some trucks with Associates.

15 Q O.K.

16 In any event, then there was talk about--

17 By the way, when you talk about burning the
18 house, without picking the people off, was that more,
19 possibly the same hypothetical or "maybe we can do that"?
20 Right?

21 A I really don't recall. I don't understand
22 what you're trying to, you know, could you rephrase it
23 a little bit?

24 Q As you continued talking the girls continued
25 dancing and you continued drinking; right?

Ebert-cross/Iannuzzi

A Yes.

Q So then the next thought came out, "Well, maybe you'll burn down the house," then another thought came, "Well, maybe burn down the garage," and you were sitting right there, right?

A Right.

Q And you were talking about it with George. He was talking about it with you, right?

A (No response)

Q You didn't go over to the phone, drop a dime and call the police, say, "Here's a guy that's going to burn down a house," did you?

A No, I didn't.

Q You sat there and drank with him?

A Right.

Q In addition to talking about this, while you were talking, I guess you were talking about other things, as thoughts come up in a conversation at a bar, wasn't constantly talking about burning down anything, was it?

A Right.

Q So you were just having this conversation and every once in a while a thought would drop into the conversation, "Well, you know, this is possible to do this, do that," after a while you found yourself in the car, right?

Ebert-cross/Lannuzzi

A Correct.

Q And it was in this-- at this time, this place you say you weren't in a stupor but in kind of a daze, not everything is clear to you exactly how it came off, right?

A Correct.

Q And that's how all the rest of this happened, right, going back, I mean, you didn't get sober on the way back to McGhee's house, did you?

A No, I didn't get sober going back to McGhee's house, no.

Q Everything that happened happened while you were still in this condition, right?

A I don't understand what you mean by the condition.

Q Whatever condition you were in. I'm not going to characterize it, but whatever condition you were in, after you got back. How long did it take you to get back to McGhee's house?

A McGhee's was less than half a mile away.

Q Pretty fast to get there, right?

A Yes.

Q And when you got to McGhee's house you said you backed the car around so you could make a fast getaway, right?

Sarkis-direct

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2 the people -- in front of friends or something. I don't know.
3 He grab him or push him and was going to pick him and he
4 asked to blow his head off, something to that matter like that.
5 I said, "Don't talk about it. Look at the girls. Forget
6 about this guy."

7 So we kept drinking and drinking and drinking
8 and from this place we moved across the street and the same
9 thing --

10 Q Then what happened?

11 A So I told him, "Take me to the airport. I want
12 to go home. It's time for me to go."

13 He said, "Let's go."

14 We get into the car and he drives like into a
15 garage -- a gas station. I thought he was going to put gas
16 in the car so I am sitting like this (indicating) --

17 Q Indicating huddled into a coat?

18 A -- because it was getting cold, chill, so he
19 is talking with the guy in the station something. He got like
20 in his hands, you know, those things that you put water into
21 plants.

22 Q A gardening can?

23 A Something like. I don't know if he got it from
24 the trunk or the garage. He come with that and put it in
25 the front in the seat, like this, in the middle of the seat --

Sarkis-direct

Q Were you sitting in the front seat or the back seat?

A I was in the front seat with him.

Q He put it on the seat between the two of you?

A On the floor between the seat like this -- he put it there (indicating).

Q Go ahead.

A So he get in the car and drive. I thought he was taking me to the airport. I see he went to McGhee's house. So he says to me, "I'm going to fix this nigger. I want to show him that he can't fuck with me."

I say, "Listen, I don't want no trouble because I go to Puerto Rico and then what about Mr. Schwartz? Don't do anything that will incriminate -- get anybody in trouble because I am going to Puerto Rico. I don't want no trouble with nobody."

He keeps saying, "I'm going to fuck this nigger. I'm going to burn his car."

So he opened the door and I go to hold him. He gets off his side and starts running to this man's garage. I don't want to make more noise. I figure he was there. He was yelling hysterical, he want to burn his car. I said, "Go ahead. Fuck it. Fuck you, then." So I went back to the car and so he had a match or lit something and he burn the car.

Sarkis-direct

I say, "What you gain by burning this man's car? You don't get money? You burn the car, he no want to pay you or anything like that."

He said, "Fuck it, I get the satisfaction. I get even with him some kind of way."

I say, "Now you take me to the airport."

I argue with him a couple of times in the car. He say, "You chicken." I say, "I'm a chicken but I punch you in the nose. Leave me in the airport."

My suitcase was all open -- all messed. So it fall off from me -- the lock from the suitcase and all the clothes all over there. I get there and I show my thing to the man and he say, "Don't worry." He lent me a piece of rope, I tied it up. I didn't check it. I hurry into the plane. I told the girl, "You want to check my things?" She say, "You can take it with you inside the plane." I took it inside the plane. They lent me a piece of rope or something.

Q Then you went to Puerto Rico?

A Yes, I did.

I was glad that I was home.

Q Did you ever call Mr. Schwartz and tell him about what happened with reference to the fire?

A As a matter of fact I felt shame, I felt guilt --

THE COURT: Strike it out as not responsive.

Q And he called Mr. McGhee all those bad names, right?

A Yes, he did.

Q And you would never use names like that, would you?

A I don't. I like to call people by their right names, because I expect to be called the same way.

Q And did Mr. Ebbert go on at some length on how much he hated McGhee?

A Yes, he did. Not only McGhee, he was unpolite with the old lady and the girl that came to the door.

Q He didn't like any of them?

A That's correct.

Q And later on he told you that he was going to burn the garage to get even with them; is that right?

A He was ready to take me to the airport, see, at the end he start talking about McGhee's son that he wants to get even with these people, called them all kinds of names, and he says he was going to take me to the airport. When I opened my eyes I'm at this fellow's house, see.

Q When did he tell you that he was going to get even with McGhee by burning down his garage?

A After he got the kerosene -- the gasoline he

1 8 Sarkis-cross.

2 was going -- I thought he was taking me to the airport. I
3 don't know the direction of McGhee's house or the direction
4 to the airport --

5 Q Is that when he told you?

6 A I don't know the direction.

7 Q Is that when he told you he was going to get
8 even with McGhee by burning down his garage?

9 A He told me a couple of times that he was going
10 to get even with him. I didn't know he was going to burn the
11 garage.

12 (Continued next page.)

Sarkis-cross

BY MR. KIMELMAN:

pm21 3 Q So he -- to the best of your understanding,
gr/ss 4 he was going to burn the garage because of a personal thing,
5 that had nothing to do with Gaines; is that correct?

6 A That's correct.

7 Q So you went to these bars and the next thing
8 you know you are leaving the bar and you are at a gas station
9 is that right?

10 A Yes sir.

11 Q Who bought the gas?

12 A He did.

13 Q He did?

14 A Yes sir.

15 Q He got the gas in some kind of a watering can;
16 is that right?

17 A That's correct, sir.

18 Q He took the gas and he put it in the front seat
19 of the car?

20 A That's correct.

21 Q What did you say to him when he put the gas in
22 the front seat of the car?

23 A I didn't know what he was going to do because
24 he didn't told me he was going to burn this man's garage,
25 the car. So I told -- first he got into the garage, I thought

Sarkis-cross

he was going to get gas for the car.

Q What did you tell --

A Nothing with the garage.

Q What did you tell him, Mr. Sarkis, when he put the gas can in the front seat of the car?

A I didn't tell him anything. I didn't know what was the purpose of the gasoline.

Q You didn't ask him?

A I didn't ask him. It wasn't my concern.

Q The same way -- everything that's happened -- up to now --

THE COURT: Objection sustained.

MR. IANNUZZI: Objection.

Thank you, sir.

A (Continuing.) Maybe he takes the gasoline --

THE COURT: No. There is no question.

THE WITNESS: I'm sorry, your Honor.

Q After he got the gasoline in the car, did you ask him where we are going next?

A I didn't ask him anything. He's supposed to take me to the airport.

Q Did you ask him, are we going to the airport?

A Yes sir, I did.

Q What did he say?

A He said "I take you in a minute."

So I figured he -- he kept driving. I go like this (indicating) in the front. It was getting chilly so I go -- I put my head back. I -- I go like in a daze. I go to sleep a little bit. I was tired. I'm beat. I'm sick.

So when we -- he stopped the car, so I looked at the woods, the trees and the house and I say this is not the airport. I say -- he say "I'm going to get even with this" -- can I use the expression, your Honor? He say "I want to get even with this fucking nigger. I'm going to burn his fucking house."

Q What--

A He's going to burn the garage, his car.

Q What did you say?

A So I tell, what you going to do with that, what you going to gain out of burning this car. You are not going to get his money or you want to get even with the man.

THE COURT: Is this the way you said it, in that manner, in this tone of voice?

THE WITNESS: That's correct, sir.

So he said, "You chicken." You this and that. I said, "I'm not chicken. I punch you in the nose but I don't burn -- I don't want to be in cahoots with you in this business. You're supposed to take me

to the airport."

Q Because you didn't --

A He said "Fuck you."

He open up the door. I got out the -- this side to hold him. He spill me over with gasoline. So he started running to these people's garage and sprayed the thing like that and lit a match or light it, I don't know.

I stayed like about from here to this man are (indicating), so he left the thing there and the thing went puff, like this (indicating), so he asked me, you know, what he told me, you wanted to stay, you could stay here, he said to me. I say "This is beautiful."

Q So --

A He got my suitcase --

Q Let me understand this. He said that he was going to burn down a garage, you physically tried to stop him and you couldn't do it; is that right?

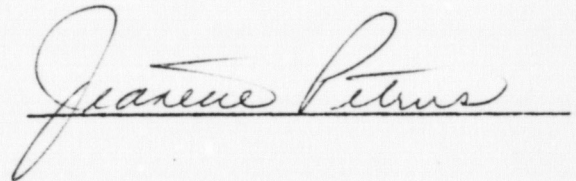
A But I was -- I wasn't feeling too well and if --if I try hard enough, I probably subdue him but I wasn't feeling -- I was a little bit high, drunk and maybe I could subdue him.

I feel very bad about it. I feel guilty. I feel that shame, what he have done, because I'm with the guy that's supposed to protect and he gets evil. I don't

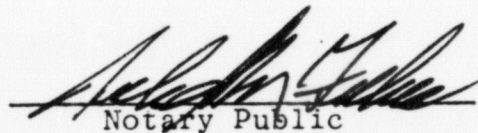
STATE OF NEW YORK)
)
)ss:
COUNTY OF NEW YORK)

Jeanette Petrus, being duly sworn, deposes and says
that deponent is over the age of 18 years, is not a party
to the action and resides at 233 Broadway, County and State
of New York.

That on the 10th day of September, 1976, deponent served
the within Appendix upon the U.S. Attorney for the Eastern Dist.,
the attorney in the within action at the address designated
by said attorney by depositing the same in a postpaid
wrapper in an official depository of the United States Post
Office in the State of New York.



Sworn to before me this 10th
day of September , 19 76


Notary Public

RICHARD M. FEDROW
Notary Public, State of New York
No. 24-4618986
Qualified in Kings Co.
Commission Expires March 30, 1977